APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA. IN CHANCERY. CASE NO. 66013015

FRANK SUTTON, on behalf of himself and others similarly situated,

Plaintiff,

vs.

TOM ADAMS, as Secretary of State of the State of Florida, and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY DECREE AND OTHER RELIEF

COMES NOW the Plaintiff, FRANK SUTTON, on behalf of himself and others similarly situated, by and through his undersigned Attorney and files this his Complaint for Declaratory Decree and Other Relief and as and for a basis for such Complaint says:

I.

The Plaintiff, FRANK SUTTON, is a resident of Dade County, Florida, and over the age of twenty one (21) years.

The Defendant, TOM ADAMS, is the Secretary of State of the State of Florida, with offices at Tallahassee, Leon County, Florida, and in Miami, Dade County, Florida. By law, all candidates for State office are required to qualify with the Secretary of State and to make regular

reports to said Defendant containing the names and addresses of contributors to the election campaign and the amount contributed by each contributor.

The Defendant, EARL FAIRCLOTH, is the Attorney General of the State of Florida; he has offices in Tallahassee, Leon County, Florida, and in Miami, Dade County, Florida, and is made a party Defendant to this suit because it involves the construction of and validity and constitutionality of general law of the State of Florida.

II.

The Plaintiff, FRANK SUTTON, is the holder of license number 313, which is a license issued by the State of Florida permitting the sale of intoxicating beverages. He is also the owner and holder of a Federal Import Permit, permitting him to import spirituous wines and liquors for re-sale.

III.

Since 1951, in accordance with the provisions of Chapter 99 of the Florida Statutes, the Plaintiff has been prohibited from directly or indirectly contributing in any manner to any political party or candidate for nomination or election to any political office. The pertinent provisions of said Chapter provide:

> "(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation hold-

ing such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the State."

IV.

In 1965, said law was amended and now provides as follows:

"(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the State; *provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations.*" *(Emphasis added)*

V.

The penalty for violation of the foregoing provisions of the law is contained in Section 104.27, Florida Statutes, which provides as follows:

"(1) Any person who knowingly violates the provisions of Sec. 99.161 shall be deemed guilty of a misdemeanor and subject to a fine of not more than one thousand dollars or to imprisonment for not more than six months.

In addition thereto—

(2) The nomination or election to office of any person who knowingly violates the provisions of Sec. 99.161, or whose campaign treasurer or deputy campaign treasurer knowingly violates the provisions of Sec. 99.161, shall be void, and the nomination or office shall be filled as in other cases where a vacancy occurs.

***

(5) Any license for the sale of intoxicating beverages shall be subject to revocation by the state beverage department if any person holding such a license, or any member of an unincorporated association holding such a license, or any officer or director of a corporation which holds such a license, knowingly violates Sec. 99.161. ***"

VI.

Plaintiff is a resident of the State of Florida, living in Florida for more than one (1) year prior to the institution of this suit and residing in Dade County for more than six (6) months, and is a duly qualified and registered voter in Florida. He is a qualified elector and has been a citizen of the United States for more than ten (10) years last past.

VII.

Plaintiff is desirous of giving political contributions to the candidate and political party of his choice.

He alleges and believes that the provisions of Section 99.161(b) of the Florida Statutes prohibiting political contributions by the individuals or officers named therein, are invalid, unconstitutional and void and that such provisions are contrary to the protection guaranteed by the Constitution of the State of Florida and the Constitution and laws of the United States, for the reasons set forth hereinafter.

VIII.

Under the provisions of Section 561.15 of the Florida Statutes, licenses for the sale of alcoholic beverages only to the persons of good moral character, or to corporations whose officers are of good moral character. Further, by law, no license under the beverage law shall be issued to any person who has been convicted within the past five years of any offense against the beverage laws of this state, or who has been convicted in the last past fifteen years of any felony in this state, or has been convicted in any other state or the United States, of an offense designated as a felony by such state or the United States, or to a corporation, any one of whose officers has been so convicted. In addition to the foregoing, applicants for liquor licenses must complete forms prescribed by the director of the Beverage Department and must file a set of fingerprints on regular United States department of justice forms for himself and the manager or person to be in charge of his business. Plaintiff alleges that by reason of the foregoing the good moral character of an applicant for a license for the sale of intoxicating beverages is established before said license is issued to him. He is discriminated against by reason of the fact that he is prohibited from making political contributions while operators of other type businesses, no matter what their background, are free to make political contributions.

IX.

Plaintiff alleges that by reason of the provisions of Chapter 567, Florida Statutes, the sale of alcoholic beverages is not permitted in any county in the State of Florida, without the prior approval thereof in an election by a majority of those legally voting to determine whether the sale of intoxicating beverages will be permitted or prohibited in the County. Despite this provision in the law, after the voters of a county have designated their willingness for the sale of alcoholic beverages in the County, and after an applicant has been approved by the Beverage Director of the State of Florida and granted a license for the sale of alcoholic beverages, the holder of such license is now prohibited from making political contributions. The holder of such license is thereby discriminated against by reason of the fact that he is prohibited from making political contributions while operators of other types of businesses which do not require the approval of a majority of the voters before such business may exist, are free to make political contributions.

X.

Plaintiff alleges that Section 99.161(b) is unconstitutional for the following additional reasons:

(a) Under the provision of the Declaration of Rights of the State of Florida and in particular Section 1 thereof, all men are equal before the law and have certain inalienable rights. Under the provisions of Chapter 99.161(b), Plaintiff is deprived of fundamental rights afforded other citizens of the State of Florida by virtue of his inability to contribute, as others may, to political campaigns.

(b) Under the provisions of Section 13 of the Declaration of Rights of the State of Florida, Plaintiff is assured the right to fully speak and write his sentiments on all subjects. Under the provisions of Section 99.161(b) of the Florida Statutes, Plaintiff is inhibited in his right to freedom of speech.

(c) Under the provision of Section 15 of the Declaration of Rights of the Constitution of the State of Florida, Plaintiff is granted the right given to all citizens to assemble together, to consult for the common good and to instruct his representatives. The effect of Section 99.161(b) of the Florida Statutes is to substantially deny Plaintiff that right asserted by the Constitution of the State of Florida.

(d) Under the provisions of Section 1, Article VI of the Constitution of the State of Florida, Plaintiff's rights as an elector are guaranteed. Section 99.161(b) of the Florida Statutes curtails those rights.

XI.

Plaintiff alleges that Section 99.161(b) as amended by the Legislature in 1965, is so vague and ambiguous as to be unconstitutional. Under the present provision of the law, one who holds a liquor license and is prohibited thereby from contributing to political campaigns or candidates may, avoid the proscription contained in the act merely by joining one of the types of organizations in the 1965 Amendment.

XII.

Plaintiff further alleges that Section 99.161(b) of the Florida Statutes is invalid, unconstitutional and void in that said Legislation constitutes an unlawful restriction of Plaintiff's right to vote and support the candidate of his choice, or the political party of his choice by limiting his right to vote to the actual casting of his ballot, only, thus depriving him of the right to support, contribute to or participate in elections as other citizens are permitted to do, without a reasonable basis and without reasonable classification. The denial to the Plaintiff of those rights is contrary to the guarantee of equal protection of law afforded by the Fourteenth Amendment to the Constitution of the United States as well as those provisions of the Constitution of the State of Florida, hereinabove set forth.

XIII.

Plaintiff desires to participate by contribution and otherwise in his rights and duties as a citizen of Florida and of the United States to the same degree as is permitted other citizens and residents. Nevertheless, so long as Section 99.161(b) and 104.27 remain as part of the general law of the State of Florida, without a judicial declaration of their invalidity and unconstitutionality, Plaintiff must remain in doubt of his rights to act in accordance with his conscience and beliefs in engaging in political activities to the same degree as permitted other citizens.

WHEREFORE, Plaintiff prays that this Honorable Court will:

1. Take jurisdiction of this cause and the parties hereto.

2. Construe and determine the validity and constitutionality of Section 99.161(b) of the Florida Statutes.

3. Upon Final Hearing hereof hold that Florida Statute 99.161(b) is in conflict with the Constitution of the State of Florida and in particular, Sections 1, 13 and 15 of the Declaration of Rights and Section 1, Article VI and/or with the Fourteenth Amendment to the Constitution of the United States, and that said Section 99.161(b) is unconstitutional, null, void and unenforceable.

4. That this Court will grant such other relief as it deems just and proper.

Milton E. Grusmark
Attorney for Plaintiff
407 Lincoln Road
Miami Beach, Florida.

APPENDIX B

ANSWER

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

NO. 67-183

FRANK SUTTON, on behalf of himself and others similarly situated,

Plaintiff,

v.

TOM ADAMS, as Secretary of State of the State of Florida, and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Defendants.

Come now the Defendants, Earl Faircloth as Attorney General, and Tom Adams, as Secretary of State, and answer the Plaintiff's complaint as follows:

1. The Defendants admit the allegations in paragraph I of the Complaint.

2. The Defendants are without knowledge as to the allegations in paragraphs II and III of the Complaint.

3. The Defendants admit the allegations in paragraphs IV and V of the Complaint.

4. The Defendants are without knowledge as to the allegations contained in paragraph VI of the Complaint.

5. The Defendants are without knowledge as to the Plaintiff's desire as alleged in paragraph VII of the Complaint and deny the allegation in that paragraph that Section 99.161, (1), (b), Florida Statutes, is unconstitutional.

6. The Defendants admit the allegations in paragraphs 8 and 9 of the Complaint relative to the issuance of licenses to sell alcoholic beverages but deny the allegation that the provisions of Section 99.161 (1), (b), Florida Statutes, are discriminatory.

7. The Defendants deny the allegations in paragraph X of the Complaint that Section 99.161 (1), (b), Florida Statutes, is violative of the Declaration of Rights 1, 13 and 15, and Article VI, Section 1 of the Florida Constitution.

8. The Defendants deny the allegation in paragraph XI of the Complaint that Section 99.161 (1), (b), Florida Statutes, is so vague and ambiguous as to be unconstitutional.

9. The Defendants deny the allegation that Section 99.161 (1), (b), Florida Statutes, deprives the Plaintiff of his right to "vote and support the candidate of his choice," or that it deprives the Plaintiff any guarantee of equal protection under the Fourteenth Amendment to the United States Constitution.

10. The Defendants deny the allegation in paragraph XIII of the Complaint that there is any doubt as to Plaintiff's rights under Section 99.161, (1), (b), Florida Statutes.

WHEREFORE, the Defendants pray that this Honorable Court will enter an order dismissing this cause and granting such relief as the Court deems just and proper.

Respectfully submitted,
Earl Faircloth
Attorney General

Wilson W. Wright
Assistant Attorney General

Capitol Building
Tallahassee, Florida

In Proper Person and as
Attorneys for Defendant
Tom Adams, Secretary of State

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing answer has been mailed to Honorable Milton E. Grusmark, Attorney for Plaintiff, 407 Lincoln Road, Miami Beach, Florida, this 5th day of June, A.D., 1967.

Wilson W. Wright

APPENDIX C

FINAL DECREE

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

NO. 67-183

FRANK SUTTON, on behalf of himself and others similarly situated,

Plaintiff,

-v-

TOM ADAMS, as Secretary of State of the State of Florida, and EARL FAIRCLOTH, as Attorney General of the State of Florida,

Defendants.

This cause came on for final hearing before the Court. The parties have agreed that the Plaintiff is a resident of Dade County, Florida, is the holder of a liquor license No. 313 issued by the State of Florida permitting the sale of intoxicating beverages. He is the owner and holder of a Federal import permit permitting him to import spirituous wines and liquors for resale. The parties agree further that Plaintiff is a registered and qualified voter in the State of Florida and a qualified elector who has been a citizen of the United States for more than ten years preceding the filing of this suit.

The Court finds the foregoing facts.

Plaintiff seeks a declaration that Section 99.161 (1) (b), Florida Statutes, is unconstitutional. The subsection involved is embodied with certain provisions enacted by the Legislature seeking to control election contributions by persons holding a license for the sale of intoxicating beverages.

> Prior to 1965, Section 99.161 (1) stated:
> "(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any poliitcal party or to any candidate for nomination for, or election to, any political office in the state."

In 1965 the Legislature amended the foregoing provision by an addition of the following:

> "provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations."

The contention of the Plaintiff is that the subsection under attack is unconstitutional in that no reasonable classification exists. The Court concludes that notwithstanding the fact that the constitutionality of Section 99.161, Florida Statutes, as written prior to 1965 was upheld in Smith v. Ervin, 64 So. 2d 166, the amendment added by the 1965 session of the Legislature is unconstitutional for the reasons as contended by the Plaintiff. It appears, however, that subsection (1) (b) of Section 99.161

is severable from the remainder of Section 99.161, since this is the only subsection that has a direct or adverse effect upon the Plaintiff and others similarly situated. It is, therefore,

ORDERED, ADJUDGED and DECREED as follows:

1. This Court has jurisdiction of the parties and the subject matter of this cause.

2. . Subsection (1) (b) of Section 99.161, Florida Statutes, 1965, is declared null, void and inoperative.

DONE and ORDERED, in Chambers at Tallahassee, Florida, Leon County, this 5th day of October, 1967.

/s/ HUGH M. TAYLOR
Circuit Judge

APPENDIX D

In The
SUPREME COURT OF FLORIDA
January Term, A. D. 1968

Case No. 36,913

TOM ADAMS, AS SECRETARY OF STATE OF THE STATE OF FLORIDA, et al.,

Appellants,

vs.

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellees.

Opinion filed June 5, 1968

An Appeal from the Circuit Court for Leon County, Hugh M. Taylor, Judge

Earl Faircloth, Attorney General, and Robert A. Chastain, Assistant Attorney General, for Appellants

Milton E. Grusmark and Natalie Baskin, for Appellees

DREW, J.

Appellant in this case controverts a declaratory decree of the circuit court holding the following statute invalid under Sec. 1, 13, or 15, Decl. of Rights, Sec. 1, Art. VI, Fla. Const., or Amend, 14, U. S. Const.

> "(b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director of a corporation hold-

> ing such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the state; *provided however that these prohibitions shall not apply to members of country clubs, fraternal, social, and cultural organizations.*" (e.s.) Sec. 99.161(1)(b), F.S.

The decree states:

> "The contention of the Plaintiff is that the subsection under attack is unconstitutional in that no reasonable classification exists. The Court concludes that notwithstanding the fact that the constitutionality of Section 99.161, Florida Statutes, as written prior to 1965 was upheld in Smith v. Ervin, 64 So. 2d 166, the amendment added by the 1965 session of the Legislature is unconstitutional for the reasons as contended by the Plaintiff . . . Subsection (1)(b) of Section 99.161, Florida Statutes, 1965, is declared null, void and inoperative."

This statute, prohibiting political contributions by liquor licensees, was designed to apply both to individual licensees and to those affiliated with group licensees, either unincorporated associations or corporate license holders. The amendment condemned by the decree in this case provides "these prohibitions shall not apply to members of "certain organizations of a fraternal nature. This language, in our opinion, simply excludes those organizations from the group licensees covered by the act, and prevents application of its prohibitions against contributions on the basis of affiliation with such licensees. We do not overlook the contention that the amendment might be literally

construed, out of context, to provide that members of fraternal, social and cultural organizations shall be excluded from the prohibition against contributions, regardless of their status otherwise as individual or affiliate liquor licensees. Certainly this result was not intended and does not follow from our construction of the proviso, which by "these prohibitions" refers to prohibitions against contributions by affiliates of organization licenees.

Thus contrued, we think the amendment must be regarded as based on inherent distinctions between the specified organizations and others for which beverage licensees might serve a different purpose. We are presented with no evidence, argument or authority which would negate the existence of a reasonable relationship between the purpose of the act and the classes excluded. So far as plaintiff based his attack on alleged discrimination between liquor licensees and other business endeavors, the situation is one governed by principles well stated in an earlier opinion of this Court recognizing that:

> "... the regulation and control of the alcoholic beverage business is peculiarly a legislative function. In this connection, as in all similar situations, when the legislative branch of the government exercises a legislative power in the form of a duly enacted statute or ordinance it is not the function of a court to explore the wisdom or advisability of the enactment in order to bring its enforceability into question. To this end the limits of the court's authority is to measure the validity of the legislative enactment by the requirements of the controlling law. If those standards are met the legislation should be upheld." State v. Cochran, 114 So.2d 797, 800.

The Florida Constitution, Sec. 26 of Article 3, requires that laws be passed to prevent all undue influence from improper practice in the conduct of elections. Our decisions recognize that "what is an 'improper practice' is for the Legislature to ascertain and prohibit under adequate penalties, within the reasonable limitations implied in the exercise of all expressly stated legislative powers."[1]

The decree is accordingly reversed and the cause remanded for disposition in accordance with this opinion.
THOMAS, ROBERTS, ERVIN and ADAMS, JJ., concur
THORNAL, J., concurs in part and dissents in part with Opinion

CALDWELL, C.J., concurs in Opinion by THORNAL, J.

THORNAL, J., concurring in part and dissenting in part.

I would strike from the statute the underscored proviso quoted in the opinion by Justice Drew. The legislature might have intended what the opinion assumes but it certainly did not so state. I fear that the opinion merely supplies a judicial assumption of legislative intent, contrary to the expressed language of the enactment. The proviso, I think, is unconstitutional. I would strike it and permit the remainder of the statute to stand. I concur in part and dissent in part.

CALDWELL, C.J., concurs

APPENDIX E

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1968

TOM ADAMS, as Secretary of State of the State of Florida, et al.,

Appellants,

vs.

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellees.

PETITION FOR REHEARING

COMES NOW Appellee, by his undersigned attorney, and files this Petition for Rehearing, seeking a reconsideration of the Opinion of this Court, and as a basis for such petition, says:

1. The Court ruled on one phase of the case; that is, that the exclusion of members of various types of social and fraternal organizations from the restrictions of the statute is valid. This petition does not contend that the Court overlooked that phase of the question since it was specifically discussed.

2. The Court, however, did in its Opinion of June 5, 1968, fail to consider every other phase of the attack upon the statute made in the complaint filed in this case. It, therefore, overlooked and failed to consider all the contentions of unconstitutionality placed before the Circuit Judge who ruled on the case. It is axiomatic that a

Final Judgment or Decree will be affirmed if it is correct for any reason, and not only the reasons assigned in the decree of judgment itself.

3. Applying that principle to the case at bar, the following appears:

(a) The statute unconstitutionally prohibits freedom of speech;

(b) The statute unconstitutionally prohibits free participation in the election of representatives of the State Government, and in part, to the Federal Government;

(c) The statute is vague and ambiguous;

(d) The statute is an unconstitutional deprivation of rights in a manner unnecessary to secure the end desired.

4. No mention will be made of the phrase of the Statute which the Court discussed.

A liquor licensee is prohibited from giving a "contribution of any nature". In the consideration of that phrase in the case at bar, the ambiguity of the statute is clear. There is no definition of "contribution". As a matter of fact, other sections of the statute limit the amount of monetary contribution that may be made by any political contributor without publication. It could, therefore, reasonably be assumed that "contribution" refers to other than monetary support as well as monetary support. But the language is not clear, precise or definitive.

If "contribution" can be considered in its ultimate sense, the ultimate contribution to any candidate is a vote. The statute then not only prohibits a monetary gift by a liquor licensee but, if read nicely, prohibits a vote by a liquor licensee since a vote is certainly a contribution.

The statute obviously must include vocal support of a candidate, a contribution thus limiting freedom of speech as guaranteed by the Florida and Federal Constitutions.

QUERY: Must a liquor licensee refuse to discuss his political opinions seeking to persuade or dissuade others in their consideration of a State candidate for office or be guilty of giving a contribution of "any nature"?

5. The Court overlooked and failed to consider these basic attacks upon the statute which were raised from the outset in the complaint of the Appellee. The Chancellor below had these matters before him for consideration at the final hearing as appears from the Complaint and Answer. The limitation of his reasons for striking down the statute is consistent with the principle of constitutional laws that a court should go no further than necessary in declaring a statute or ordinance unconstitutional.

CONCLUSION

It is respectfully urged that a full consideration of the problem involved in Florida Statute 99.161 (b) has not been made by this Honorable Court, as appears from the Opinion of June 5, 1968. It is urged that reconsideration of the matter will be appropriate under the circumstances presented in this record.

Respectfully submitted,

MILTON E. GRUSMARK
Attorney for Appellee
1674 Meridian Avenue
Miami Beach, Florida 33139

Milton E. Grusmark

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Rehearing was served by mail on Earl Faircloth, Attorney General, and Robert Chastain, Assistant Attorney General, Attorneys for Appellants, The Capitol, Tallahassee, Florida 32304, this 22nd day of June, 1968.

Milton E. Grusmark

APPENDIX F

IN THE SUPREME COURT OF FLORIDA
JULY TERM A.D. 1968
MONDAY, JULY 15, A.D. 1968

CASE NO. 36,913

TOM ADAMS, AS SECRETARY OF STATE OF THE STATE OF FLORIDA, ET AL,
Appellants

vs.

FRANK SUTTON, on behalf of himself and others similarly situated,
Appellees

On consideration of the Petition for Rehearing filed by Attorneys for Appellee,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A TRUE COPY,

TEST:
SID J. WHITE
CLERK SUPREME COURT

(THE MANDATE IN THIS CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT FOR LEON COUNTY)

APPENDIX G

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

October Term, 1968

FRANK SUTTON, on behalf of himself and others similarly situated,

Appellants,

vs.

TOM ADAMS, as Secretary of State of the State of Florida, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the appellants,

IT IS ORDERED that the time for docketing the appeal in the above-entitled case be, and the same is hereby, extended to and including November 12, 1968, without prejudice to the Court's consideration of whether this application has been filed in time.

/s/ Hugo L. Black
Associate Justice of the Supreme Court of the United States.

Dated this 22nd day of October, 1968.